



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/166575

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on August 05, 2015, at West Bend, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was over-issued \$1,164.00 in FoodShare (FS) benefits for the months of June 2012 through August 2012, August 2013, November 2013, April 2014, and July 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Tony Gehring

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. On April 27, 2012 the agency sent the petitioner a notice stating that her monthly FoodShare (FS) benefits would continue in the amount of \$201. The notice went on to explain that if the household's total monthly gross income increased above \$1,594.00, the petitioner was to report that increase by 10th day of the following month.
3. In April 2012 the petitioner's gross income was \$2,647.00. The petitioner never reported this increase in income.
4. The petitioner's monthly income was as follows: \$3,613.00 in June 2012, \$2,477.00 in July 2012, and \$2,485.00 in August 2012.
5. The petitioner continued to receive \$201 in monthly FS benefits from June through August 2012 for a total of \$603.00.
6. On June 10, 2013 the agency sent the petitioner a notice stating that her FS benefits were increasing from \$16 to \$184 effective June 1, 2013. Her FS had decreased between August 2012 and June 2013. The notice went on to explain that if the household's total monthly gross income increased above \$1,640.00, the petitioner was to report that increase by 10th day of the following month.
7. In June of 2013 the petitioner's gross income was \$3,071.00. The petitioner never reported this increase in income.
8. The petitioner remained over the income reporting requirement in August 2013 with a monthly gross income of \$2,723.00.
9. The petitioner received \$184 in FS benefits for August 2013.
10. On September 23, 2013 the agency sent the petitioner a notice stating that her monthly FS benefits would increase from \$186 to \$367 effective October 1, 2013. The notice went on to explain that if the household's total monthly gross income increased above \$1,681.00, the petitioner was to report the increase by the 10th day of the following month. The petitioner's monthly FS benefits increased because she reported to the agency that she was no longer receiving child support.
11. The petitioner's monthly gross income was as follows: \$1,433.00 in September 2013, \$1,307.00 in October 2013, and \$2,880.00 in November 2013.
12. The petitioner never reported an increase in income in 2013.
13. The petitioner received \$347 in FS benefits in November 2013.
14. On February 17, 2014 the agency sent the petitioner a notice stating that effective April 1, 2014 she would receive \$15 in monthly FS benefits. The notice went on to explain that if the household's total monthly gross income increased above \$2,425.04, the petitioner was to report the increase by the 10th day of the following month.
15. The petitioner's monthly gross income was as follows: \$2,627.00 in February 2014, \$3,187.00 in March 2014, and \$5,218.00 in April 2014. The petitioner never reported an increase in income between February 2014 and April 2014.
16. The petitioner received \$15 in monthly FS benefits in April 2014.
17. On May 21, 2014 the agency sent the petitioner a notice stating that her monthly FS benefits would continue. The notice went on to explain the reporting requirements with respect to the petitioner's BadgerCare benefits. The reporting requirement for the BadgerCare benefits was \$1,743.43. The FS reporting requirements would have remained at \$2,425.04. The notice explained that if the household's total monthly gross income increased above the reporting requirement, the petitioner was to report the increase by the 10th day of the following month.

18. The petitioner's monthly gross income was as follows: \$5,409.00 in May 2014, \$5,527.00 in June 2014, \$4,283.00 in July 2014. The petitioner never reported an increase in income between May and July 2014.
19. The petitioner received \$15 in monthly FS benefits in July 2014.
20. The agency sent the petitioner four notices of overpayment explaining that she was overpaid the following FS benefits: \$603.00 under claim number [REDACTED] for the period from June through August 2012, \$184.00 under claim number [REDACTED] for August 2013, \$347.00 under claim number [REDACTED] for November 2013, and \$30.00 under claim number [REDACTED] for April and July 2014.
21. On May 29, 2015 the agency sent the petitioner four repayment agreements for the above-listed claim numbers.
22. The Division of Hearings and Appeals received the petitioner's Request for Fair Hearing on June 8, 2015.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 *Code of Federal Regulations (CFR)* § 273.18(b), see also *FoodShare Wisconsin Handbook (FSH)*, §7.3.2.

T FS regulations require that a household reports when their income exceeds 130% of the federal poverty level (FPL). *FoodShare Wisconsin Handbook (FSWH)* § 6.1.1.2. The household must report this increase in income by the 10th of the month following the income exceeding 130% of the FPL. *Id.*

In this case the petitioner argues that there should not be a FS overpayment because her hours fluctuated, and her employer completed the employment verification of earnings forms to the best of the employer's ability given the hour fluctuation. I have no reason to doubt the petitioner's credibility in this respect. It is evident from the petitioner's monthly gross income that her hours and work schedule varied. I also have no reason to doubt that the employer completed the employment verification of earnings forms with the employers best estimate of the petitioner's expected hours.

The petitioner fails to understand that this overpayment was not caused by her varying hours or the hours the employer reported on the employment verification of earnings form. Rather, the overpayment was caused when the petitioner failed to comply with her monthly reporting requirements. The agency correctly used the amounts on the employment verification of earnings forms until the petitioner's monthly gross income increased above 130% of the FPL. At this point the petitioner was under an obligation to report an increase in income. She failed to meet this reporting requirement, and the agency began the overpayment the month the changes would have gone into effect had the petitioner met her reporting requirement.

I do not find the petitioner's testimony that she never received several of the notices with the reporting requirements credible. This testimony is largely self-serving. The agency never received any returned mail and their system automatically mails the notices anytime there is a change in a person's benefits. I reviewed the case notes. These notes do not reflect a conversation in which an agency representative told the petitioner that they had received returned mail, and that that mail would be mailed to her current address. I further note that the petitioner called the agency and reported decreases in income causing her FS benefits to increase. If she knew the process to do that, it follows that she should also have known to report increases in income causing her FS to decrease or terminate. In addition, the petitioner admits that

she would have received some of the notices. These notices would have also contained her reporting requirement. Although her specific reporting requirement varied, her income was so far in excess of these reporting requirements that even if she had only received some of the notices she should have been aware of the reporting requirement.

I further note that the agency is under an obligation to establish and collect overpayments even if the overpayment is the result of agency error. In this case I find that the petitioner at a minimum should have known the reporting requirements, and made a mistake by not reporting when her fluctuating income went above those requirements. Thus, this overpayment is due to client error. However, even if the overpayment were due to agency error, the agency would still be under an obligation to establish and collect the overpayment.

I have reviewed the agency's calculations in this case. The petitioner does not dispute the amount of her monthly gross income for any of the months in question. The agency's calculation of this overpayment is correct. The agency correctly began the overpayment the months in which the petitioner's decrease in benefits would have occurred had the petitioner correctly followed her reporting requirements. The agency also correctly did not include any additional months where the petitioner was actually entitled to the FS benefits that she received.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was over-issued \$1,164.00 in FoodShare (FS) benefits for the months of June 2012 through August 2012, August 2013, November 2013, April 2014, and July 2014.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

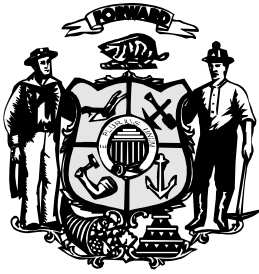
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of August, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 18, 2015.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability